

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JACK STRAWBRIDGE,

Plaintiff,

UNITED STATES OF AMERICA,

Defendant

Civil Action No.:

COMPLAINT

AND NOW, comes the Plaintiff, Jack Strawbridge, by and through his attorneys, Shenderovich, Shenderovich & Fishman, P.C., and Craig L. Fishman, Esquire, and files the following Complaint:

1. The Plaintiff, Jack Strawbridge, is an adult individual currently residing in Grove City, Mercer County, Pennsylvania.
2. Defendant United States of America ("United States" or "U.S.") is the party that maintains the U.S. Department of Veterans Affairs and its divisions and subdivisions.
3. The U.S. Department of Veterans Affairs ("VA") was established by Congress to administer the healthcare system for the Veterans of the United States of America, which includes health administration in the VA Healthcare System.
4. The mission statement for the U.S. Department of Veterans Affairs is: "To fulfill President Lincoln's promise 'To care for him who shall have borne the battle, and

for his widow, and his orphan' by serving and honoring the men and women who are America's veterans."

5. The VA Healthcare System, through its facilities, provides a broad spectrum of medical, surgical and rehabilitative care for United States veterans.

6. The VA Pittsburgh Healthcare System is a division of the United States Department of Veterans Affairs, which provides healthcare to Veterans through its facilities at University Drive Campus in Pittsburgh, Pennsylvania. VA Pittsburgh Healthcare System also operates the H.J. Heinz Campus in O'Hara Township, Pennsylvania.

7. The VA University Drive Campus in Pittsburgh, Pennsylvania (hereinafter "VA University Drive") serves as an acute care facility and has 146 operating beds distributed among medicine, surgery, neurology, and critical care. In addition, it provides a range of outpatient services and has doctor's offices where Veterans are seen on a daily basis for care for a variety of needs.

NOTICE

8. On January 5, 2017, Plaintiff's counsel served the Pittsburgh VA Regional Office Executed Standard Form 95-109 providing notice to the United States Government of the claim in this matter; Form 21-526; Form 21-4142; and a description of the underlying claim. The identical documents were served on the Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 on January 9, 2017; and on Honorable Robert McDonald, Secretary, Department of Veterans Affairs,

810 Vermont Avenue NW, Washington, DC 20420 on January 10, 2017. All three letters were served via Certified Mail and delivered on the dates listed above.

9. The Department of Veterans Affairs wrote to Plaintiff's counsel on January 18, January 25 and February 1, 2017 regarding this matter.

10. Due to a typographical error, the forms previously provided to the Department of Veterans Affairs (VA) did not include Mr. Strawbridge's correct Social Security Number. The correct Social Security Number was provided via letter and facsimile transmitted on February 10, 2017. Additional information regarding periods of service, branch and discharge and Form 21-4138 was mailed on February 17, 2017.

JURISDICTION

11. This action is brought pursuant to the Federal Tort Claims Act, 28 USC § 2671.

12. As noted above, on January 5, 9 and 10, 2017, the United States Department of Veterans Affairs was served with Plaintiff's Administrative Claim Standard Form 95-109. Receipt of the Claim Forms was made by the VA via Certified Mail, Return Receipt Requested. Information regarding Mr. Strawbridge's Social Security Number was corrected on February 10, 2017. After six months, the United States Department of Veterans Affairs has not accepted or denied the claims. Accordingly, all conditions precedent to the Federal Tort Claims Act have been properly met.

13. Venue is properly within this district under 28 U.S.C. §1402(b) as the acts complained of occurred in the Western District of Pennsylvania.

14. The claims herein are brought against the United States of America pursuant to 28 U.S.C. §2671, *et seq.* (Federal Tort Claims Act), for money damages as

compensation for personal injuries that were caused by the negligent and wrongful acts and omissions of the employees of the United States Government while acting within the scope of their offices and employment, under circumstances where the United States, if a private person, would be liable to the Plaintiffs in accordance with the laws of the Commonwealth of Pennsylvania.

FACTS

15. Jack Strawbridge was born in 1962 and grew up in Western Pennsylvania. He joined the United States Army and served his country, and was discharged with the rank of E4. He was honorably discharged in 1982. Mr. Strawbridge is a dedicated Veteran and patriot. Throughout his life, he has used the VA Health Administration Services to receive medical care.

16. Prior to April 20, 2016, Mr. Strawbridge received primary care at VA Butler Healthcare. He developed left leg pain, and was advised that he required placement of two stents in his left leg to treat occluded blood vessels. The surgery was performed at VA Pittsburgh Healthcare System – University Drive on approximately April 20, 2016.

17. He received post-operative care at University Drive, and was placed on Plavix to prevent formation of new blood clots.

18. Mr. Strawbridge used the VA automated telephone prescription refill number to obtain his Plavix prescriptions without difficulty through September 2016.

19. On or about October 3, 2016, he called the VA automated prescription refill telephone number and the automated attendant incorrectly and negligently advised that the prescription was no longer available. Mr. Strawbridge understood the automated

telephone message to mean that he no longer required the prescription, and that it had been cancelled by his physician.

20. The prescription actually had been transferred to VA Butler Healthcare for refill, but Mr. Strawbridge was not informed of this fact by the automated prescription refill system.

21. Since Mr. Strawbridge was unable to refill his prescription for Plavix, he ran out of medicine, and his stents became occluded, requiring bypass graft surgery in his left leg on or about November 28, 2016. Shortly after that surgery, the bypass graft became occluded, and Mr. Strawbridge was required to undergo repeat bypass graft surgery.

22. If he had continued to take Plavix, Mr. Strawbridge's stents would not have become occluded, and he would not have required bypass graft surgery.

23. Defendant United States of America was negligent in the following particulars:

- (a) Its automated telephone prescription refill system did not provide correct or necessary information to patients;
- (b) The automated telephone prescription refill system was negligently designed, maintained, and used in a manner which did not provide complete or correct information to Mr. Strawbridge;
- (c) It failed to hire and maintain appropriate personnel for entering data into the automated telephone prescription refill system;
- (d) It inappropriately designed and maintained the automated telephone system software, which did not provide current refill information to Mr. Strawbridge;
- (e) It failed to contact Mr. Strawbridge regarding the change in location for his prescription refill;
- (f) It failed to advise Mr. Strawbridge that his refill location changed;

- (g) It failed to follow-up with Mr. Strawbridge's prescription;
- (h) It provided Mr. Strawbridge with confusing and inaccurate information regarding his prescription refill;
- (i) It failed to properly teach, instruct, and monitor its employees in entering information into the automated telephone prescription review system;
- (j) It failed to properly teach, instruct, and monitor its employees informing patients regarding a change in prescription refill location;
- (k) It failed to communicate correct information with its patient;
- (l) It failed to monitor and correct misuse of, and incorrect information entered into the automated prescription refill system; and
- (m) It allowed Mr. Strawbridge's prescription to run out without contacting him regarding the need for a refill.

24. The negligence of the Defendant, as heretofore described, was the legal cause the Plaintiff's damages and injuries including stent occlusion, bypass graft surgeries, and Plaintiff's other damages and injuries as described herein. The negligence of the Defendant increased the risk that the Plaintiff would suffer the injuries and damages described in this Complaint.

25. As a direct and proximate result of the negligence of the Defendant, the Plaintiff suffered and the Defendant is liable to the Plaintiff for the injuries and damages described in this Complaint.

26. As a direct and proximate result of the negligence and/or carelessness of the Defendant as described herein, Jack Strawbridge suffered the following injuries and damages:

- (a) Stent occlusion;
- (b) Two bypass graft surgeries;
- (c) Need for extensive testing and medical procedures;

- (d) Hospitalizations;
- (e) Physical pain and suffering;
- (f) Loss of enjoyment of life's pleasures;
- (g) Mental anguish and emotional distress;
- (h) Medical bills;
- (i) Lost wages;
- (j) Medical bills;
- (k) Impaired general health, strength, and vitality; and
- (l) Other damages and injuries which may become apparent during the

pendency of this action.

WHEREFORE, the Plaintiff, Jack Strawbridge, respectfully requests this Honorable Court enter judgment in his favor and against the Defendant in an appropriate amount, and that the Plaintiff be awarded damages and fees, costs of litigation and such other relief as this Honorable Court deems just and appropriate, and demands a trial by jury.

PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL ISSUES.

Respectfully Submitted,

By: /s/ Craig L. Fishman
Craig L. Fishman, Esquire
PA I.D. #58753

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